CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 199 of 2011

(Arising out of Order-in-Original No. 01/APSS/CCDRI/NCH/2011 dated 31.01.2011 passed by the Commissioner of Central Excise (Adj.), New Customs House, New Delhi.)

Dr. Mohandhas **....Appellant**
C/O Sushrushah Hospitals
Tuticorin - 8

Versus

The Commissioner of Central Excise (Adj.) **....Respondent**
New Custom House, Near IGI Airport,
New Delhi-110037

APPEARANCE:

None for the Appellant
Shri N.M. Goyal, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: January 19, 2026

FINAL ORDER NO. 50160/2026

JUSTICE DILIP GUPTA

This appeal has been filed to assail that portion of the order dated 31.01.2011 passed by the Commissioner of Central Excise (Adjudication), New Delhi[1] that confirms the duty upon the appellant, confiscates the imported cars and imposes redemption fine under section 125 of the Customs Act, 1962[2].

2. It transpires that the appellant is a purchaser of the car imported by Nehru Place Hotel Pvt Ltd[3] under the Export Promotion Capital Goods[4] licenses issued to the said Hotel. The Hotel was providing hospitalities services to various guests, including international guests

1 the Commissioner
2 the Customs Act
3 the Hotel
4 EPCG

and earned foreign exchange. Chapter 6 of the Export/Import Policy 1997-2002 provided for exemption from customs duty to capital goods imported under the Export Promotion Capital Goods[5] Scheme. It also needs to be noted that Notification No. 29/1997 dated 01.04.1997[6] extended complete exemption from basic custom duty as well as additional duty to goods required for rendering services by hotel industry subject to certain conditions. The export obligation was satisfied by the Hotel and the DGFT issued the Export Obligation Discharge Certificate. The Customs Authorities also cancelled the bond. Thereafter, the DRI investigated into the matter and issued a show cause notice dated 12.05.2010. The appellant submitted a reply and denied the allegations made in the show cause notice.

3. The Commissioner (Adjudication), however, by the impugned order confirmed the demand of duty and imposed redemption fine upon the appellant for the reason that the Hotel had not discharged the export obligation and, therefore, was not entitled to claim the benefit of Exemption Notification.

4. Case has been called out but no one has appeared on behalf of the appellant.

5. Shri N.M. Goyal, learned authorized representative appearing for the department has made submissions on behalf of the department.

6. The submission that has been advanced by Mr. N.M. Goyal, learned authorized representative appearing for the department is that there is no error in the impugned order that may call for any interference in the appeal. Learned authorized representative also

5 EPCG
6 Notification dated 01.04.1997

placed reliance upon the decision of the Supreme Court in **Surya Samudra Holiday Resorts Pvt Ltd** vs. **CC (Export) Mumbai**[7].

7. The appellant is a subsequent purchaser of the BMW car from the Nehru Place Hotels Pvt Ltd.

8. The appeal has been perused and the submissions advanced by the learned authorized representative appearing for the department have been considered.

9. A perusal of the decision of the Tribunal in **Interglobe Enterprises Limited** vs. **Commissioner of Customs, New Delhi**[8] clearly indicates that the issue involved in this appeal is covered by the said decision of the Tribunal. The Tribunal also distinguished the decision of the Supreme Court in **Surya Samudra Holiday Resorts** that has been relied upon by the learned authorized representative appearing for the department.

10. The Tribunal in paragraph 12 of the decision examined whether the export obligation were fulfilled only by the usage of the imported cars and after referring to the communication dated 29.11.2005 issued by the DGFT held as follows:

> **"13.** This clearly establishes that the foreign exchange earned by the appellant by use of the imported cars and other services as a tour operator fell well within the parameters of the EPCG Scheme. Further, our attention has been drawn to the letter dated 27.12.2006 issued by DGFT wherein it was clarified as given hereinafter:
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> "
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> Dt: 27.12.2006
>
> The Joint Director General
>
> Of Foreign Trade,
>
> Bangalore

7 2010 (256)ELT 433(Tri-Mumbai)
8 Customs Appeal No. 124 o f2010 decided on 20.11.2025

[Kind Attn: Shri M. Balagangadharan, Joint DGFT]

Subject: ***Import of Cars under EPCG Scheme - reg.***

Sir,

Please refer to your letter No 07/21/EPCG MISC. Statement/06 dated 3.11 2006 with regard to the DRI communication under their reference No.S/IV/43/2005/861 dated 4.7 2006 received in that office.

2. The matter has been examined in detail. In their communication DRI has raised two issues:-

(i) The cars imported under the erstwhile Policy registered in individual name should first be got registered as tourist and commercial vehicles and foreign exchange earnings after such conversion alone should be considered towards fulfilment of EO.

(ii) Export earnings through alternate products and services, like room rent, income from sale of food, beverages etc. should not be considered towards discharge of EO.

3. **As regards 2(i) above mandatory requirement of registration of cars imported under EPCG as Tourist/Commercial vehicles has been notified on 14.6.2006 and included as a part of the Foreign Trade Policy 2004-09. Prior to this date, there was no such stipulation in the Foreign Trade Policy Therefore, foreign exchange earnings by use of these vehicles not registered as Commercial/Tourist vehicles cannot be denied the benefits of considering the same towards fulfilment / discharge of EO so long as no other misuse/transfer of such a vehicle/registration of such vehicle in the name other than the licence holder is reported.** As regards the mandatory registration of these vehicles as Tourist/Commercial vehicles prior to this date, there appears to be violation of Motor Vehicles Act on account of use of private registered vehicles for commercial purposes. However, this aspect has to be looked into by the Regional Transport Authority concerned and DRI is at liberty to approach RTA concerned for seeking appropriate action to be taken by that authority on this score.

4. As regards 2 issue at 2(ii) above, in the working of hotel, tourism and travel service industry the vehicles are part of an overall package drawn by these service providers for the tourists. This package may include hotel accommodation, food, beverages and travel cost and charges for utilizing imported vehicles would not be billed separately to the tourist. **It is therefore not practically possible for these sectors to show export earnings separately from use of these vehicles. Therefore, the views expressed by the DRI**

> **or this score cannot be accepted and all benefits including all earnings for providing hotel accommodation, sale of food and beverages, apart from transportation of the tourist, should be considered towards discharge of export obligation against vehicles imported under EPCG scheme.** This is however subject to the condition that no part of the sale proceeds have been paid in free foreign exchange to any other service provider for providing add on services for hotel accommodation etc
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> xxxxx xxxxx xxxxx xxxxx
>
> 6. This issues with the approval of Competent Authority
>
> Yours faithfully
>
> (M.K. Parimoo)
>
> Joint Director General of Foreign Trade"
>
> 14. In view of the clarification, we hold that the appellant had completed his export obligation by providing services related to Travel & Tourism industry."

11. The decision of the Tribunal in **Surya Samudra** relied upon by the learned authorized representative appearing for the department was distinguished by the Tribunal in paragraphs 17 and 18 of the decision and they are reproduced below:

> **"17.** Perusal of the Apex Court decision clearly holds that the Tribunal's findings that the fulfilment of Export Obligation Certificate was not 'determinative' was not sustained. In the context of the instant case, we find that the majority opinion in the said decision of the Tribunal had held that the **holding of EODC issued by the competent authority, viz., DGFT was not determinative of fulfilment of export obligation.** The Apex Court has set-aside this very observation of the Tribunal, on which the Ld AR has placed reliance in the instant case. The term "determinative factor" in a judgment refers to an element, circumstance, or condition that has a decisive influence or directly controls the outcome of the case before the court. It essentially means the cause or consideration that is pivotal in deciding the legal issue or dispute; in other words, it is the "but for" or "because of" factor whose existence or absence conclusively settles the point at issue. It is a crucial element, influence, or circumstance that decisively shapes or controls the nature, outcome, or direction of a situation, decision, or

event. The Courts have interpreted the term "determinative" particularly in the context of contracts, as referring to something that can be brought to an end or terminated, especially at the unilateral will of a party without reference to breach or other circumstances. In legal terminology, "determinative" also means sufficient to decide something, such as a question of fact or law.

18. In the instant case, the holding of the EODCs was determinative of completing their export obligations towards the import of the three cars. We note that copies of logbooks of all the 3 vehicles were submitted to the departmental authorities establishing the use of the said three vehicles for transporting guests and used in other tourism related activities. The Department has led no evidence to the contrary. Hence, we hold that the appellant had completed his export obligation and the issuance of EODCs by DGFT are determinative of the same."

12. Similar view was taken by a Division Bench of the Tribunal in **M/s. Bestech Hospitalities Pvt Ltd** vs. **Commissioner of Customs (Preventive), New Delhi**[9].

13. The relevant paragraphs of this decision dealing with the issues are reproduced below:

"**19.** The issue that arises for consideration in these appeals is whether the demand could be confirmed with consequent penalties for violation of the conditions of the Notification, when the EODC was issued in favour of the appellant evidencing fulfilment of export obligation and it has not been cancelled till date.

20. The first submission that has been advanced by the learned counsel for the appellant is that since that export obligation had been fulfilled by the appellant within the time granted by the DGFT and EODC was issued and received by the appellant, duty could not have been demanded from the appellant when proceedings had not been initiated by DGFT against the appellant for cancelling the EODC. **The contention, therefore, that has been advanced is that once the DGFT authorities exercised their jurisdiction and satisfied themselves that the export obligation was fulfilled by the appellant within the stipulated time and redeemed the bank guarantee, the customs department does not have any jurisdiction to sit in judgment over the EODC issued by the DGFT."**

9 2025(8) TMI 509-CESTAT NEW DELHI

14. After relying upon the decision of the Supreme Court in **Titan Medical Systems Pvt Ltd** vs. **Collector of Customs, New Delhi**[10] and the decision of the Delhi High Court in **Design Company & Ors** vs. **Union of India and ors**[11], the Division Bench held:

> "**24.** It is not in dispute that EODC had been issued to the appellant by DGFT on 30.06.2008. It is also not in dispute that the said EODC has not been cancelled till date by DGFT.
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> **25.** In **Titan Medical Systems** the Supreme Court observed that once a licence was issued and it was not questioned by the licencing authority, the customs authorities cannot refuse exemption on an allegation that there was mis-representation. The Supreme Court further observed that if there was any mis-representation, it was for the licencing authority to examine and take steps.
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> **26.** The aforesaid decision of the Supreme Court in **Titan Medical Systems** was followed by the Delhi High Court in **Design Company**. The Delhi High Court held that it would be wholly impermissible for the customs authorities to ignore the MIES certificate or deprive holder of the said certificate of the benefits that can be claimed in the scheme, absent any adjudication or declaration of invalidity by the DGFT. The Delhi High Court further held that there cannot be a parallel or a contemporaneous power inhering in two separate sets of authorities with respect to the same subject. If an instrument owes its origin to the FTDR Act, than it is the DGFT which will have to inquire and any action for recovery of benefits claimed and availed would have to necessarily be preceded by the component authority and under the FTDR Act. The Delhi High Court further held that Customs authorities would not have the jurisdiction to question the validity of a certificate referable to the FTDR Act.
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> **27. In this view of the matter, the customs authority could not have confirmed the demand in the absence of any adjudication by the DGFT cancelling the EODC certificate earlier issued by it certifying that the export obligation had been fulfilled by the appellant. The Customs department would, therefore, not have any jurisdiction to sit in judgment over the EODC issued by the DGFT."**
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> **(emphasis supplied)**

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10 2003 (151) E.L.T. 254 (S.C.)
11 W.P.(C) 14477/2022 decided on 22.11.2024

15. In view of the aforesaid two decisions of the Tribunal in **Interglobe** and **Bestech Hospitalities**, it has to be held that the Customs Authorities could not have confirmed the demand in the absence of any adjudication by the DGFT cancelling the EODC certificate earlier issued by it certifying that the export obligation had been fulfilled by the appellant.

16. The confirmation of demand and imposition of penalties upon the appellant, cannot, therefore, be sustained and is set aside.

17. The impugned order dated 31.01.2011, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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